

of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and (ii) . . . determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls."¹²⁷⁸

The FCC has determined that reciprocal compensation arrangements apply to local traffic.¹²⁷⁹ In February 1999, the FCC determined that traffic directed to an Internet service provider ("ISP") and bound for the Internet was interstate and, therefore, not subject to its reciprocal compensation rule.¹²⁸⁰ The Department responded to the FCC's Order by reversing a prior Department ruling regarding ISP-bound traffic and held that VZ-MA is not required to pay reciprocal compensation for ISP-bound traffic.¹²⁸¹ Acknowledging the difficulty in differentiating ISP-bound traffic from local traffic, the Department approved a 2:1 ratio of terminating to originating traffic, any excess of which VZ-MA may consider to be terminating to an ISP and, thus, exclude from reciprocal compensation payments, unless the submitting CLEC provides evidence that its "local" (*i.e.*, non-ISP bound) traffic exceeds the 2:1 ratio.¹²⁸²

¹²⁷⁸ 47 U.S.C. § 252(d)(2)(A).

¹²⁷⁹ 47 C.F.R. § 51.701.

¹²⁸⁰ Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68 et al., Declaratory Ruling and Notice of Proposed Rulemaking, FCC 99-38 (rel. Feb. 26, 1999) ("Internet Traffic Order").

¹²⁸¹ VZ-MA Application, Appdx. G, Vol. 5, Tab 108 (MCI WorldCom, D.T.E. 97-116-C (1999)).

¹²⁸² Id. at 28 n.31.

In the Bell Atlantic New York Order, the FCC concluded that, in light of the FCC's holding in the Internet Traffic Order, inter-carrier compensation for ISP-bound traffic is not governed by section 252(b)(5), and, therefore, is not a checklist item.¹²⁸³ In March 2000, the United States Court of Appeals for the D.C. Circuit vacated the FCC's Internet Traffic Order, and remanded the Order back to the FCC for a further explanation of the FCC's analysis.¹²⁸⁴

2. Discussion

VZ-MA states that it complies with the requirements of this checklist item by offering CLECs reciprocal compensation arrangements through its interconnection agreements with carriers.¹²⁸⁵ As of February 2000, VZ-MA is paying reciprocal compensation to 24 CLECs, nine broadband CMRS providers, and seven paging companies.¹²⁸⁶ According to VZ-MA, in 1999, approximately 300 million minutes of use ("MOUs") originated with CLECs and were terminated by VZ-MA; approximately 16 billion MOUs originated with VZ-MA and were delivered to CLECs.¹²⁸⁷ VZ-MA paid approximately \$48.9 million to CLECs for VZ-MA

¹²⁸³ Bell Atlantic New York Order at ¶ 377.

¹²⁸⁴ Bell Atlantic Tel. Cos. v. FCC, 206 F.3d 1 (2000).

¹²⁸⁵ VZ-MA Application, Appdx. A, Tab 1, ¶ 292 (Lacouture/Ruesterholz Decl.).

¹²⁸⁶ Id. at ¶ 293.

¹²⁸⁷ VZ-MA Application, Appdx. B, Vol. 32a-b, Tab 423, ¶ 323 (VZ-MA May Checklist Aff.).

traffic delivered to them in 1999.¹²⁸⁸ For the first two months of 2000, VZ-MA paid CLECs approximately \$5.2 million for terminating 6.6 billion MOUs.¹²⁸⁹ Reciprocal compensation payments made by VZ-MA are based on the 2:1 ratio established by the Department or under inter-carrier compensation agreements that cover local as well as ISP-bound traffic.¹²⁹⁰

VZ-MA notes that the FCC confirmed that reciprocal compensation, under § 251 of the Act, is mandated only for the transport and termination of local traffic, and that ISP-bound traffic is non-local interstate traffic.¹²⁹¹ VZ-MA states that it has made reciprocal compensation payments in excess of the Department ordered 2:1 ratio to one CLEC which produced evidence that its local traffic exceeded the ratio.¹²⁹²

GNAPs claims that VZ-MA has not complied with its § 271 obligations with respect to reciprocal compensation.¹²⁹³ GNAPs argues that VZ-MA has not paid it reciprocal compensation according to the Department adopted 2:1 ratio.¹²⁹⁴ In addition, GNAPs indicates that the FCC's Internet Traffic Order does not relieve VZ-MA of its obligation to pay CLECs

¹²⁸⁸ Id.

¹²⁸⁹ Id.

¹²⁹⁰ VZ-MA Application, Appdx. A, Tab 1, ¶ 294 (Lacouture/Ruesterholz Decl.).

¹²⁹¹ VZ-MA Application, Appdx. B., Vol. 1a-aa, Tab 2, ¶ 100 (Howard Aff.).

¹²⁹² VZ-MA Application, Appdx. A, Tab 1, ¶ 294 (Lacouture/Ruesterholz Decl.).

¹²⁹³ VZ-MA Application, Appdx. B, Vol. 15, Tab 180, at 2 (Global NAPs Pre-Filed Technical Session Statement).

¹²⁹⁴ Id.

for terminating non-ISP bound calls.¹²⁹⁵ GNAPs claims that, immediately following the Department's Order in D.T.E. 97-116-C, GNAPs informed VZ-MA that approximately one-third of its traffic is not ISP bound; however, GNAPs received no response from VZ-MA.¹²⁹⁶ GNAPs also states that VZ-MA refuses to negotiate with GNAPs despite the Department's prompting VZ-MA to do so.¹²⁹⁷ According to GNAPs, before entering into any negotiations regarding reciprocal compensation with GNAPs, VZ-MA insists that the parties first execute a confidentiality agreement.¹²⁹⁸ GNAPs states that to require such an agreement would be unlawful and would prevent the parties from reporting back to the Department as to the status of the negotiations and, therefore, GNAPs has been unwilling to sign such an agreement.¹²⁹⁹

AT&T states that the fact that VZ-MA is not bound to pay reciprocal compensation in excess of the Department mandated 2:1 ratio means that VZ-MA cannot satisfy its obligation under § 271.¹³⁰⁰ According to AT&T, the FCC has stated that checklist item 13 is important to

¹²⁹⁵ Id. at 3.

¹²⁹⁶ Id.

¹²⁹⁷ Id. at 5, citing D.T.E. 97-116-C.

¹²⁹⁸ VZ-MA Application, Appdx. B, Vol. 15, Tab 180, at 5 (Global NAPs Pre-Filed Technical Session Statement).

¹²⁹⁹ Id.

¹³⁰⁰ VZ-MA Application, Appdx. B, Vol. 15, Tab 178, at 2 (AT&T's Prefiled Comments re. Checklist Items for Technical Session).

ensure that all carriers that originate calls bear the costs of terminating such calls.¹³⁰¹ AT&T states that the Department found that CLECs incur costs to terminate calls to ISPs originated by VZ-MA.¹³⁰² Accordingly, AT&T argues that CLECs are entitled to compensation for these costs by VZ-MA.¹³⁰³ However, during the September 8, 2000 panel hearing, AT&T indicated that VZ-MA is in compliance with checklist item 13.¹³⁰⁴

In response to GNAPs' claim that VZ-MA has not paid any reciprocal compensation to GNAPS, VZ-MA states that it used the 2:1 ratio as the basis for making its payments to GNAPS and the amount of traffic terminated to VZ-MA by GNAPS has been minuscule.¹³⁰⁵ VZ-MA states that it is current on all reciprocal compensation payments to GNAPS.¹³⁰⁶ In response to GNAPs' claim that approximately one-third of its traffic is not ISP-bound and, therefore, eligible for reciprocal compensation payments, VZ-MA states that GNAPS has not provided support for its claim to VZ-MA.¹³⁰⁷ Further, in response to GNAPs' claim that

¹³⁰¹ Id.

¹³⁰² Id., citing D.T.E. 97-116-C.

¹³⁰³ Id.

¹³⁰⁴ VZ-MA Application, Appdx. B, Vol. 49, Tab 565, at 5436 (Transcript of Oral Argument Session Held 9/8/00).

¹³⁰⁵ VZ-MA Application, Appdx. B, Vol. 32a-b, Tab 423, ¶ 327 (VZ-MA May Checklist Aff.).

¹³⁰⁶ Id.

¹³⁰⁷ Id. at ¶ 328.

VZ-MA will not negotiate with GNAPs, VZ-MA states that GNAPs' current negotiating position is that VZ-MA must first surrender its claim regarding no reciprocal compensation for past and current ISP-bound traffic before GNAPs will discuss inter-carrier compensation charges for future traffic, and that GNAP's position on this issue is unacceptable to VZ-MA.¹³⁰⁸ VZ-MA's reciprocal compensation rates were established in a Consolidated Arbitrations proceeding and were made permanent, along with other UNE rates, in another Department Order.¹³⁰⁹

3. Conclusions

VZ-MA has demonstrated that it has reciprocal compensation arrangements in accordance with § 252(d)(2) in place, and is making required payments on a timely basis. VZ-MA has shown it is providing reciprocal compensation under the obligations in its Department-approved interconnection agreements and tariffs, as well as relevant Department Orders. Therefore, we verify compliance with the requirements of checklist item 13. AT&T's argument regarding compensation for ISP-bound traffic is one that will be reached in the context of the FCC's action on remand, and is outside of our § 271 proceeding. With regard to

¹³⁰⁸ Id. at ¶ 329.

¹³⁰⁹ See VZ-MA Application, Appdx. H, Vol. 27, Tab 162 (DTE's Phase 4 Order re. TELRIC); VZ-MA Application, Appdx. H, Vol. 36, Tab 250 (D.T.E.'s Phase 4-B Order); VZ-MA Application, Appdx. H, Vol. 42, Tab 293 (D.T.E.'s Order Denying TCG's Motion for Reconsideration); VZ-MA Application Appdx. H, Vol. 42, Tab 294 (D.T.E.'s Order Approving NYNEX's TELRIC Compliance Filing); VZ-MA Application, Appdx. F, Vol. 8, Tab 157 (D.T.E.'s Order Granting BA-MA's Motion to Adopt Permanent UNE Rates).

GNAPs' arguments, we do not conclude that VZ-MA's actions have violated the § 271 provisions relative to reciprocal compensation. GNAPs has not provided persuasive evidence to conclude that VZ-MA is not complying with the 2:1 payment ratio mandated by one of our Orders.¹³¹⁰ The Department notes that the concerns of AT&T and GNAPs were raised during the Department's 1999 technical sessions, but that AT&T and GNAPs did not raise the same concerns thereafter or respond to VZ-MA's May 2000 Supplemental Filing regarding reciprocal compensation.

N. Checklist Item 14 - Resale

1. Standard of Review

Section 271(c)(2)(B)(xiv) requires a BOC to make "telecommunications services . . . available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)."¹³¹¹ Under § 251(c)(4)(A), ILECs are required "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."¹³¹² In addition, § 252(d)(3) requires state commissions to determine wholesale rates based on "retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange

¹³¹⁰ See VZ-MA Application, Appdx. G, Vol. 5, Tab 108 (D.T.E. 97-116-C).

¹³¹¹ 47 U.S.C. § 271(c)(2)(B)(xiv).

¹³¹² 47 U.S.C. § 251(c)(4)(A).

carrier.”¹³¹³

Moreover, § 251(c)(4)(B) prohibits “unreasonable or discriminatory conditions or limitations” on services resold under § 251(c)(4)(A), with the exception that, if an ILEC makes a service available only to a specific category of retail subscribers, a state commission may prohibit a reseller under § 251(c)(4)(A) from offering the service to a different category of subscribers. Finally, §§ 271(c)(2)(B)(ii) and 271(c)(2)(B)(xiv) require that a BOC demonstrate that it provides nondiscriminatory access to OSS for resale, and the FCC will presume that any resale restriction is unreasonable unless the BOC proves to the state commission that the restriction is reasonable and non-discriminatory.¹³¹⁴

2. Resale non-OSS Issues

a. Discussion

VZ-MA indicates that its retail telecommunications services are available for resale at wholesale rates pursuant to interconnection agreements and its Department-approved resale tariff (Tariff No. 14).¹³¹⁵ VZ-MA discounts its retail telecommunications services at the wholesale discount rates established by the Department.¹³¹⁶ The discount rates are 24.99

¹³¹³ 47 U.S.C. § 252(d)(3).

¹³¹⁴ 47 C.F.R. § 51.613(b); SBC Texas Order at ¶ 387; Bell Atlantic New York Order at ¶ 379.

¹³¹⁵ VZ-MA Application, Appdx. A, Tab 1, ¶ 296 (Lacouture/Ruesterholz Decl.).

¹³¹⁶ VZ-MA Application, Appdx. A, Tab 1, ¶ 295 (Lacouture/Ruesterholz Decl.); VZ-MA
(continued...)

percent when a reseller uses VZ-MA's OS and DA, and 29.47 percent without these VZ-MA services.¹³¹⁷

The resale discount was established by the Department, pursuant to pricing rules set by the FCC in the Local Competition First Report and Order. The general methodology employed by the Department was to determine the percentage of VZ-MA expenses (as a fraction of revenues) that are avoidable in sales for resale and apply that percentage discount to the retail rate for each service, deriving a wholesale rate that has the effect of excluding costs avoided by VZ-MA.¹³¹⁸ The Department required two uniform discount rates for business and residential customers, one including OS and DA from VZ-MA (24.99 percent) and the other excluding OS and DA (29.47 percent).¹³¹⁹

VZ-MA claims that it is providing resold services in the commercial volumes demanded by the CLECs. Through July 2000, VZ-MA has provided about 246,000 resold lines to more

¹³¹⁶(...continued)

Application, Appdx. F, Vol. 8, Tab 157 (DTE's Order Granting VZ-MA's Motion to Adopt Permanent UNE Rates).

¹³¹⁷ VZ-MA Application, Appdx. A, Tab 1, ¶ 295 (Lacouture/Ruesterholz Decl.); VZ-MA Application, Appdx. F, Vol. 8, Tab 157 (DTE's Order Granting VZ-MA's Motion to Adopt Permanent UNE Rates).

¹³¹⁸ Id. at 10.

¹³¹⁹ VZ-MA Application, Appdx. L, Vol. 1, Tab 1, Section 10.5.1. (D.T.E.'s Tariff No. 14).

than 44 resellers, including 32,000 residential lines and 214,000 business lines.¹³²⁰ VZ-MA maintains that it makes its retail telecommunications services available for resale without unreasonable or discriminatory conditions or limitations.¹³²¹ VZ-MA asserts that the only restrictions for resale of its retail telecommunications services are those expressly authorized by applicable FCC and Department rules.¹³²² VZ-MA further indicates that, pursuant to a Department Order, VZ-MA restricts a reseller from purchasing, at the wholesale discount, Public Access Lines (“PAL”) or Public Access Smart-pay Lines (“PASL”) services for use by the reseller or its affiliates.¹³²³

VZ-MA allows resellers to assume retail contracts (unless prohibited by tariff or contract) under the same terms and conditions as the retail contract, with the applicable wholesale discount.¹³²⁴ The customer is subject to termination liabilities to the extent they were part of the original terms of the contract.¹³²⁵ This contract termination policy will remain in effect until February 24, 2001, at which time VZ-MA will reevaluate it.¹³²⁶ VZ-MA adds that,

¹³²⁰ VZ-MA Application, Appdx. A, Tab 1, ¶ 297 (Lacouture/Ruesterholz Decl.).

¹³²¹ VZ-MA Application, Appdx. A, Tab 1, ¶ 296 (Lacouture/Ruesterholz Decl.).

¹³²² Id.

¹³²³ VZ-MA Application, Appdx. B, Vol. 1a-aa, Tab 1, ¶ 19 (Crawford Aff.).

¹³²⁴ VZ-MA Application, Appdx. A, Tab 1, ¶ 299 (Lacouture/Ruesterholz Decl.).

¹³²⁵ Id. at ¶ 300.

¹³²⁶ VZ-MA Application, Appdx. B, Vol. 42, Tab 494, ¶ 172 (VZ-MA August

(continued...)

with the exception of the end date, this termination policy is the same as VZ-NY's policy approved by the FCC in the Bell Atlantic New York Order.¹³²⁷ Specifically, VZ-MA notes that the FCC found that VZ-NY's termination liabilities did not constitute a restriction on resale under checklist item 14.¹³²⁸

ASCENT generally claims that VZ-MA engages in "anti-competitive tactics" and cites as an example VZ-MA's refusal to resell voicemail like other ILECs, including BA-NY. ASCENT also contends that VZ-MA will revert to an anti-competitive contract termination charge policy in 2001.¹³²⁹ ASCENT notes that in previous § 271 reviews, the FCC has taken the issue of termination liabilities seriously.¹³³⁰ ASCENT argues that a concern arises in this case because, unlike New York, Massachusetts has not established guidelines on permissible termination liabilities.¹³³¹ Although the Department ruled that VZ-MA did not have to resell

¹³²⁶(...continued)

Supplemental Checklist Aff.).

¹³²⁷ VZ-MA Application, Appdx. B, Vol. 42, Tab 494, ¶ 172 (VZ-MA August Supplemental Checklist Aff.), citing Bell Atlantic New York Order at ¶ 390.

¹³²⁸ Id.

¹³²⁹ VZ-MA Application, Appdx. B, Vol. 38, Tab 456, at 10-11 (ASCENT July Supplemental Comments).

¹³³⁰ Id. at 9.

¹³³¹ Id. at n.9.

voicemail, ASCENT contends that VZ-MA is not precluded from so doing.¹³³²

In response to ASCENT's comment that VZ-MA will revert to an anti-competitive termination policy in 2001, VZ-MA asserts that ASCENT's claim is a speculative assumption of VZ-MA's future conduct and thus, is not a current § 271 issue.¹³³³ VZ-MA also states that its decision not to make voicemail available for resale or to provide inside wiring service for resellers is in accordance with Department policy.¹³³⁴

b. Conclusions

Based upon the evidence in the record, we determine that VZ-MA meets its obligation to offer for resale at wholesale rates any telecommunications service that VZ-MA provides at retail to subscribers who are not telecommunications carriers. VZ-MA makes its retail telecommunications services available for resale at wholesale rates pursuant to its interconnection agreements and its Department-approved resale tariff. Moreover, no CLEC challenged VZ-MA's compliance with this portion of checklist item 14.

ASCENT's comments regarding VZ-MA's termination liability policy amount to mere speculation regarding VZ-MA's future conduct and do not apply to VZ-MA's current policy,

¹³³² VZ-MA Application, Appdx. B, Vol. 38, Tab 456 at 11 (ASCENT July Supplemental Comments), citing DPU/DTE 97-101 (1998).

¹³³³ VZ-MA Application, Appdx. B, Vol. 42, Tab 494, ¶ 172 (VZ-MA August Supplemental Checklist Aff.).

¹³³⁴ Id. at ¶ 168, citing D.T.E. 97-101; VZ-MA Application, Appdx. L, Vol. 2, Tab 5 (DTE's Order in 97-101: RCN Arbitration) (11/09/98); VZ-MA Application, Appdx. H, Vol. H, Tab 121 (DPU Phase I Order) (11/08/96).

which is the same as VZ-NY's policy approved by the FCC in the Bell Atlantic New York Order. Moreover, no other CLEC or reseller raised complaints about VZ-MA's termination liability policy. According to VZ-MA, the FCC has found that termination liabilities do not on their face cause a carrier to fail checklist item 14.¹³³⁵ Accordingly, we conclude that ASCENT's complaint does not prevent a finding of compliance with checklist item 14.

In support of its claim that VZ-MA engages in "anti-competitive tactics," ASCENT states that VZ-MA refuses to resell voicemail, but that VZ-MA could choose to do so. The Department has not ordered VZ-MA to resell voicemail, and the fact that VZ-MA has not voluntarily chosen to resell voicemail does not prevent a finding of compliance.¹³³⁶

3. Resale OSS Issues

a. Billing

i. Discussion

RNK reports that it resells approximately \$200,000 per month of VZ-MA's services.¹³³⁷ RNK contends that VZ-MA's bills for resold services are consistently untimely, inaccurate, and overly difficult to interpret, and that these problems prevent RNK from competing with VZ-

¹³³⁵ SBC Texas Order at ¶ 392.

¹³³⁶ See VZ-MA Application, Appdx. L, Vol. 2, Tab 5 (D.T.E.'s Order in 97-101: RCN Arbitration) (November 9, 1998) (Department denied RCN's request that Verizon be ordered to make voice messaging services available for resale).

¹³³⁷ VZ-MA Application, Appdx. B, Vol. 17, Tab 205, at 3 (RNK Pre-Technical Session Statement).

MA.¹³³⁸ RNK raises two concerns with the timeliness of bills. First, RNK states that it has inquired about obtaining Connect:Direct and DUF, but notes that the process to request, install and maintain Connect:Direct is burdensome and potentially costly.¹³³⁹ RNK further asserts that “industry sources” report problems with Connect:Direct and DUF, including transmission errors at the software interpretation level.¹³⁴⁰ In addition, RNK questions whether the data provided by Connect:Direct is consistent with the CD-ROM versions of the electronic bills.¹³⁴¹

Second, RNK notes its dissatisfaction that resale bills are due 30 days after the billing date, rather than 30 days after the posting date.¹³⁴² RNK indicates that it relies on the electronic version of the bill contained on CD-ROMs, which generally arrive a week before the bill due date.¹³⁴³ RNK claims, however, that the timing and technical complications of interpreting the CD-ROMs make it difficult for RNK to determine, before the bill is due and with reasonable accuracy, the amounts that RNK owes VZ-MA and the amounts RNK’s own customers owe

¹³³⁸ Id. at 3-4.

¹³³⁹ VZ-MA Application, Appdx. B, Vol. 37, Tab 453, at 2 (RNK July Supplemental Comments).

¹³⁴⁰ Id.

¹³⁴¹ Id.

¹³⁴² Id. at 3.

¹³⁴³ Id. at 3-4.

RNK.¹³⁴⁴ RNK recommends that VZ-MA's Tariff No. 14 be amended so that the due date will run from the date the CD-ROM bills are sent to CLECs, thus, ensuring that CLECs have 30 days to pay the bill.¹³⁴⁵

VZ-MA responds that it provides CLECs, in a timely manner, with all information they need to bill for resold services, including billing details for calls and service usage that are billed individually.¹³⁴⁶ In response to RNK's dissatisfaction with resale bills being due 30 days after the billing date, VZ-MA explains that resale billing methods and procedures were modeled after its retail summary bill service.¹³⁴⁷ VZ-MA states that it is its normal procedure to send resale and retail paper bills within seven to ten days from the billing period via the U.S. Postal Service.¹³⁴⁸ VZ-MA indicates that, as explained in the Resale Handbook, the electronic version of the bill, available through Connect:Direct, CD-ROM, and cartridge tape, is the official bill.¹³⁴⁹ Moreover, the electronic version is available through Connect:Direct at the same time the paper summary bill is completed, and therefore is available before the paper bill is

¹³⁴⁴ Id. at 4.

¹³⁴⁵ Id. at 9.

¹³⁴⁶ VZ-MA Application, Appdx. A, Tab 1, ¶ 303 (Lacouture/Ruesterholz Decl.).

¹³⁴⁷ VZ-MA Application, Appdx. B, Vol. 32a-b, Tab 423, ¶ 340 (VZ-MA May Checklist Aff.).

¹³⁴⁸ Id.

¹³⁴⁹ VZ-MA Application, Appdx. B, Vol. 42, Tab 494, ¶¶ 160-161 (VZ-MA August Supplemental Checklist Aff.).

received.¹³⁵⁰

Furthermore, VZ-MA indicates that no other reseller has raised the issue of the bill timeliness because the vast majority of these resellers subscribe to DUF, which provides usage on a daily basis.¹³⁵¹ According to VZ-MA, during May through July 2000, on average, it delivered over 99 percent of DUF billing records within four business days.¹³⁵² Accordingly, VZ-MA maintains that use of Connect:Direct and DUF could eliminate many of RNK's billing issues.¹³⁵³ VZ-MA notes that Connect:Direct does require purchase of a software package for approximately \$300 and, if accessed via a dial-up arrangement, may involve toll charges, but in most cases VZ-MA provides a local access number which eliminates this concern.¹³⁵⁴ Moreover, VZ-MA states that it does not charge for DUF.¹³⁵⁵

Regarding RNK's assertions that industry sources report problems with Connect:Direct and DUF, including errors at the software interpretation level and discrepancies between the CD-ROM and Connect:Direct versions of the bill, VZ-MA states that it is not aware of any

¹³⁵⁰ Id. at ¶ 162.

¹³⁵¹ VZ-MA Application, Appdx. B, Vol. 32a-b, Tab 423, ¶ 340 (VZ-MA May Checklist Aff.).

¹³⁵² VZ-MA Application, Appdx. A, Tab 1, ¶ 303 (Lacouture/Ruesterholz Decl.).

¹³⁵³ VZ-MA Application, Appdx. B, Vol. 42, Tab 494, ¶¶ 161-162 (VZ-MA August Supplemental Checklist Aff.).

¹³⁵⁴ Id. at ¶ 158.

¹³⁵⁵ Id. at ¶ 166.

complaints from CLECs or resellers, or discrepancies between the CD-ROM and Connect:Direct versions of the bill.¹³⁵⁶ Moreover, VZ-MA notes that in the Massachusetts Draft Final Report, KPMG stated that “100% of DUF records were accurate with regard to format and content.”¹³⁵⁷

RNK also raises concerns with VZ-MA’s claim adjustments and bill credits processes.¹³⁵⁸ RNK notes that, due to VZ-MA retraining of its billing associates, VZ-MA is providing more timely responses to billing claims, and further indicates that the billing claims report now supplied by VZ-MA has remedied a problem in VZ-MA’s billing system involving a type of charge unique to RNK.¹³⁵⁹ However, RNK states that its review of the billing claim responses reveals that the dollar amounts of adjusted claims was in the order of 75 percent in RNK’s favor.¹³⁶⁰ In addition, while VZ-MA now supplies the billing claims report to enable RNK to apply credits to the proper customer’s account, RNK claims the report is of limited use to it in the actual reconciliation of RNK’s accounts because of RNK’s difficulties in

¹³⁵⁶ Id. at ¶¶ 159, 160.

¹³⁵⁷ VZ-MA Application, Appdx. A, Tab 1, ¶ 303 (Lacouture/Ruesterholz Decl.).

¹³⁵⁸ VZ-MA Application, Appdx. B, Vol. 17, Tab 205, at 6-7 (RNK Pre-Technical Session Statement); VZ-MA Application, Appdx. B, Vol. 37, Tab 453, at 4-5 (RNK Supplemental Comments).

¹³⁵⁹ VZ-MA Application, Appdx. B, Vol. 37, Tab 453 at 4 (RNK Supplemental Comments).

¹³⁶⁰ Id.

interpreting the report.¹³⁶¹

Lastly, RNK cites billing inaccuracies and errors as a concern. Although RNK acknowledges the resolution of certain RNK-specific billing errors, RNK reports that three additional difficulties in VZ-MA's billing system have arisen wherein RNK must pay VZ-MA for specific calls despite RNK's inability to bill its customer for those calls.¹³⁶² Specifically, RNK indicates that it is unable to bill its customers: (1) for collect calls to its customers; (2) for additional minutes beyond those provided for in its customers' flat rate calling plan; and (3) for calls wrongly designated as being within a customer's calling plan, which RNK states is due to an apparent change in the coding of VZ-MA's billing systems.¹³⁶³

In response to RNK complaints of a high percentage of inaccurate bills and not receiving timely credits, VZ-MA has retrained billing associates and implemented a monthly audit of all CLECs' and resellers' billing claims that were outstanding for over 30 days.¹³⁶⁴ This process, VZ-MA claims, allows the billing manager to efficiently track all open claims and to identify and escalate issues as appropriate.¹³⁶⁵ By making improvements in reduction of billing errors

¹³⁶¹ Id. at 4-5.

¹³⁶² Id. at 5-6.

¹³⁶³ Id.

¹³⁶⁴ VZ-MA Application, Appdx. B, Vol. 32a-b, Tab 423, ¶ 345 (VZ-MA May Checklist Aff.).

¹³⁶⁵ Id.

and timeliness of bill claim resolution, and by producing a billing claims report for reconciliation, VZ-MA states that it has provided RNK with the means and support to work through its billing issues.¹³⁶⁶ VZ-MA explains that the billing claims report and clarifications in the Resale Handbook contain the necessary detail to apply credits properly to customer accounts and, if RNK needs assistance, a VZ-MA billing service representative can provide additional information.¹³⁶⁷

Finally, in response to RNK's claims of difficulties in interpreting VZ-MA's billing and its inability to bill customers for certain calls for which it still must pay VZ-MA, VZ-MA states that it is investigating solutions to these problems.¹³⁶⁸ Nevertheless, VZ-MA states that RNK could have access to information regarding collect and third-party calls and detail associated with additional minutes beyond the "flat rate" calling plans if RNK obtained DUF, which contains a message type indicator that identifies the billing arrangement applicable to the call.¹³⁶⁹ Regarding a change to the billing system coding mentioned by RNK as a billing problem, VZ-MA explains that the coding change was performed to remedy an April 24, 2000,

¹³⁶⁶ VZ-MA Application, Appdx. B, Vol. 42, Tab 494, ¶ 166 (VZ-MA August Supplemental Checklist Aff.).

¹³⁶⁷ Id. at ¶ 163.

¹³⁶⁸ Id. at ¶ 164.

¹³⁶⁹ Id.

customer complaint that the VZ-MA was not in compliance with current BOS standards.¹³⁷⁰

Because the change was considered a repair, VZ-MA did not communicate the change to the CLEC community; however, VZ-MA concedes that this was a mistake and, as a result of CLEC complaints, the code was reversed.¹³⁷¹

ii. Conclusions

RNK is the only carrier to comment on VZ-MA's resale billing services. We note that RNK acknowledges improvement in timely responses to billing claims, as well as resolution of an RNK-specific billing problem through the billing claims report. We further note that VZ-MA has retrained billing associates and instituted monthly audits to ensure accurate billing, and that RNK could eliminate many of its billing problems by using Connect:Direct and DUF. Moreover, VZ-MA is assisting RNK with resolving RNK's specific billing issues, and we conclude that the present record does not reveal a systemic problem inherent in VZ-MA's billing procedures.

We also conclude that RNK fails to demonstrate that obtaining Connect:Direct or DUF would be too costly or technically infeasible, and it provided no documentation to support its assertion that "industry sources" reported problems with Connect:Direct and DUF. Finally, RNK's concerns with the timeliness of bills appears to be the result of misunderstanding as to which bill is the "official" bill. Based upon the evidence in the record, we determine that

¹³⁷⁰ Id. at ¶ 165.

¹³⁷¹ Id.

RNK's concerns do not prevent a finding of compliance with checklist item 14.

b. Provisioning, Maintenance and Repair

i. Discussion

According to VZ-MA, it is providing resold services at parity with VZ-MA's retail operations.¹³⁷² VZ-MA notes that retail services sold to CLECs are processed, maintained and repaired in the same manner as its retail services, and that it uses the same resources and personnel to provision, maintain and repair retail and resold services.¹³⁷³

VZ-MA states that, in accordance with the C2C Guidelines, it records resale provisioning measurements for POTS, Complex and Special Services.¹³⁷⁴ VZ-MA indicates that its wholesale provisioning and maintenance and repair performance generally exceeds its retail performance, as demonstrated by the following metrics: missed appointments, facilities missed orders, installation quality, trouble report rate, trouble duration intervals and repeat report rate.¹³⁷⁵ These measurements vary monthly, but overall show that, for July 1999 through February 2000, VZ-MA's resale provisioning performance is generally better than, or

¹³⁷² VZ-MA Application, Appdx. B, Vol. 42, Tab 494, ¶ 157 (VZ-MA August Supplemental Checklist Aff.).

¹³⁷³ VZ-MA Application, Appdx. A, Tab 1, ¶ 304 (Lacouture/Ruesterholz Decl.).

¹³⁷⁴ VZ-MA Application, Appdx. B, Vol. 32a-b, Tab 423, ¶ 334 (VZ-MA May Checklist Aff.).

¹³⁷⁵ VZ-MA Application, Appdx. B, Vol. 42, Tab 494, ¶ 157 (VZ-MA August Supplemental Checklist Aff.).

equivalent to, its retail provisioning performance.¹³⁷⁶ VZ-MA also notes that in its data for May through July 2000, its maintenance performance results for resale orders, such as the trouble report rate and repeat trouble reports, were comparable to its retail order performance results.¹³⁷⁷ VZ-MA states that an apparent “disparity” in maintenance and repair results, involving missed appointments, is the result of a disparate relative proportion of residential and business customers served by CLECs versus retail operations.¹³⁷⁸ VZ-MA asserts that parity may be shown by separately comparing retail and CLEC business customers and retail and CLEC residence customers.¹³⁷⁹

VZ-MA states that it is delivering resale services to CLECs within the intervals they request.¹³⁸⁰ VZ-MA also reports that for May, June and July 2000, it met, on average, 99 percent of CLECs’ installation appointments that did not require a technician dispatch and 95 percent of appointments that did require dispatch.¹³⁸¹ VZ-MA asserts that these figures are

¹³⁷⁶ VZ-MA Application, Appdx. B, Vol. 32a-b, Tab 423, ¶ 334 (VZ-MA May Checklist Aff.).

¹³⁷⁷ VZ-MA Application, Appdx. A, Tab 1, ¶ 305 (Lacouture/Ruesterholz Decl.).

¹³⁷⁸ VZ-MA Application, Appdx. B, Vol. 42, Tab 494, ¶ 157 (VZ-MA August Supplemental Checklist Aff.).

¹³⁷⁹ Id.

¹³⁸⁰ VZ-MA Application, Appdx. A, Tab 1, ¶ 306 (Lacouture/Ruesterholz Decl.).

¹³⁸¹ Id.

higher than its retail performance during the same period.¹³⁸²

VZ-MA states that the only area of VZ-MA's retail performance that appears to be more favorable than VZ-MA's resale performance is installation intervals for resale orders that can be installed without a dispatch of a VZ-MA technician.¹³⁸³ However, VZ-MA explains that "no dispatch" orders take longer to provision than retail orders because: (1) VZ-MA provides its CLEC customers with the service interval the CLECs request for the products they order, and CLECs themselves ask for longer intervals than retail customers; and (2) resellers submit a mix of orders that often have longer standard intervals than VZ-MA's mix of retail orders.¹³⁸⁴ Where CLECs have requested the standard interval for resale services, VZ-MA states that it generally provisions them on time.¹³⁸⁵

ASCENT alleges lack of parity in provisioning in three areas: initiation of service, weekend installations, and network interface device connections.¹³⁸⁶ RNK alleges that VZ-MA has had problems adhering to deadlines for provisioning or installation, and that RNK

¹³⁸² Id.

¹³⁸³ VZ-MA Application, Appdx. B, Vol. 42, Tab 494, ¶ 157 (VZ-MA August Supplemental Checklist Aff.); VZ-MA Application, Appdx. A, Tab 1, ¶ 307 (Lacouture/Ruesterholz Decl.).

¹³⁸⁴ VZ-MA Application, Appdx. A, Tab 1, ¶ 307 (Lacouture/Ruesterholz Decl.).

¹³⁸⁵ Id. at ¶ 308.

¹³⁸⁶ VZ-MA Application, Appdx. B, Vol. 38, Tab 456 at 11-12 (ASCENT July Supplemental Comments).

subsequently had to extend deadlines.¹³⁸⁷

VZ-MA responds to ASCENT's claims of a disparity in retail versus resale provisioning by noting that ASCENT produced no evidence of resellers currently experiencing such a disparity.¹³⁸⁸ ASCENT alleges a lack of parity in provisioning intervals for "cut-through" service; however, VZ-MA notes that the same rules for installation of cut-through service are applicable to VZ-MA.¹³⁸⁹ Regarding ASCENT's claim that VZ-MA would not perform weekend installations for wholesale requests, VZ-MA indicates that in April 2000, VZ-MA began accepting Saturday due dates for non-dispatchable wholesale orders and for those dispatchable orders where Saturday has been opened as a "green day" in the SMARTS clock.¹³⁹⁰ Prior to April, Saturday due dates were honored on an expedited basis only.¹³⁹¹

ii. Conclusions

ASCENT's assertions are based on the unsworn comments of Mr. McKeown, President of ServiSense, at the August 4, 1999, public hearing in Newton. ASCENT did not provide any evidence to substantiate these claims. Moreover, ServiSense itself did not file comments and

¹³⁸⁷ VZ-MA Application, Appdx. B, Vol. 2, Tab 46 at 6 (RNK Initial Comments on BA-MA's Section 271 Application).

¹³⁸⁸ VZ-MA Application, Appdx. B, Vol. 42, Tab 494, ¶¶ 169-171 (VZ-MA August Supplemental Checklist Aff.).

¹³⁸⁹ Id. at ¶ 169.

¹³⁹⁰ Id. at ¶ 171.

¹³⁹¹ Id.

ASCENT provided no evidence to indicate that ServiSense continues to have the concerns it expressed over a year ago. Likewise, RNK did not further elaborate on alleged problems with installation and provisioning deadlines. On the other hand, the performance measurements support a finding that VZ-MA provides resale services at parity with its retail operations. Thus, the problems alleged by ASCENT and RNK are insufficient to overcome VZ-MA's showing that it is in compliance with the provisioning requirements of this checklist item.

Furthermore, VZ-MA's compliance with nondiscriminatory access to OSS is discussed above among requirements for satisfaction of Checklist item 2.¹³⁹² For the reasons detailed above, we find that VZ-MA demonstrates that it offers nondiscriminatory access to its OSS for the resale of its retail telecommunications services. Furthermore, we conclude that VZ-MA's OSS offerings for resale are the same as its offerings for UNEs. Overall, VZ-MA demonstrates that it makes telecommunications services available for resale in accordance with §§ 251(c)(4) and 252(d)(3) and, consequently, satisfies the requirements of checklist item 14.

VI. PUBLIC INTEREST ANALYSIS

As the FCC has noted, the public interest analysis is an independent element of the statutory § 271 checklist. Accordingly, the FCC must render an independent determination that VZ-MA's entry into the long distance market is in the public's interest to ensure that no

¹³⁹² See Section V.B., above for discussion of access to OSS for resale of retail telecommunications services.

circumstances exist that might thwart congressional intent for the marketplace to be open.¹³⁹³ In the SBC Texas Order, the FCC stated that:

Among other things, we may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest under the particular circumstances of [the BOC's] application. Another factor that could be relevant to our analysis is whether we have sufficient assurance that markets will remain open after grant of the application. While no one factor is dispositive in this analysis, our overriding goal is to ensure that nothing undermines our conclusion, based on our analysis of checklist compliance, that markets are open to competition.¹³⁹⁴

For the reasons outlined below, we believe that the FCC's approval of VZ-MA's application is in the public interest. The local exchange market in Massachusetts is "irreversibly opened to competition."¹³⁹⁵ More than 100 facilities-based and resale CLECs are registered to operate in the Commonwealth. Each month the Department approves on average five registrations for new CLECs. Facilities-based competition is thriving not just in the urban parts of the state but also in suburban and rural areas. Although competition is greatest among business customers, residential competition is increasingly steadily and should continue to do so as CLECs increase their market penetration. As VZ-MA points out, CLECs maintain

¹³⁹³ Bell Atlantic New York Order at ¶ 422.

¹³⁹⁴ SBC Texas Order at ¶ 417.

¹³⁹⁵ Evaluation of the United States Department of Justice re: Bell Atlantic New York § 271 Filing at 7, CC Docket No. 99-295 (1999).

approximately 400,000 lines over their own facilities.¹³⁹⁶ This figure is proportionately equal to the number of facilities-based lines that competitors served in New York at the time of VZ-NY's application in New York.¹³⁹⁷ Competitors have 22 voice switches and over 2,000 fiber-route miles in VZ-MA's territory.¹³⁹⁸ Competitors also have established approximately 1,600 collocation arrangements, and have access to over 94 percent of VZ-MA's residential access lines and over 96 percent of VZ-MA's business lines through collocation arrangements.¹³⁹⁹ Although undoubtedly some competitors will argue that VZ-MA still controls too great a share of the local exchange market, the FCC does not provide a market share test and has not adopted a market share test for BOC entry into long distance.¹⁴⁰⁰

In addition, the Department has taken several steps to ensure that the local market remains open after VZ-MA enters the long distance market. On September 5, 2000, the

¹³⁹⁶ VZ-MA Application, Appdx. A, Vol. 1, Tab 6, ¶ 25 (Taylor Decl.).

¹³⁹⁷ When VZ-NY filed its New York application, competitors maintained 652,000 lines over their own facilities while Verizon served approximately 14.1 million access lines. Bell Atlantic New York Order, CC Docket No. 99-295 at ¶ 14. In Massachusetts, competitive local exchange carriers are serving approximately 400,000 lines over their own facilities while VZ-MA maintains approximately 5.4 million access lines. VZ-MA Application, Appdx. A, Vol. 1, Tab 6, ¶ 25 (Taylor Decl.).

¹³⁹⁸ VZ-MA Application, Appdx. A, Vol. 1, Tab 6, ¶ 27 (Taylor Decl.).

¹³⁹⁹ VZ-MA Application, Appdx. A, Vol. 1, Tab 1, ¶ 34 (Lacouture/Ruesterholz Decl.).

¹⁴⁰⁰ SBC Texas Order at ¶ 419.

Department adopted a comprehensive PAP for VZ-MA. The Massachusetts PAP¹⁴⁰¹ is modeled after the New York PAP and contains measurements, standards, and reporting requirements from the New York C2C Guidelines. The FCC found that both the New York PAP and the New York C2C Guidelines are comprehensive mechanisms containing key characteristics that will be effective in keeping local markets open to competition.¹⁴⁰² The Department is also certain that the PAP will provide a reliable process to report VZ-MA's performance, while serving as a dependable safeguard against backsliding. In addition, we have ordered that VZ-MA implement a separate Change Control Assurance Plan so that changes to VZ-MA's OSS software occur without interruption to competitors' operations. The Change Control Assurance Plan provides bill credits in the amount of \$5.28 million above and beyond the \$142 million bill credits under the PAP.¹⁴⁰³

Moreover, the Department is finalizing agency regulations in Accelerated Docket Rulemaking, D.T.E. 00-39, which will create an expedited dispute resolution procedure to promptly resolve disputes among telecommunications carriers.¹⁴⁰⁴ These regulations are

¹⁴⁰¹ A summary of the Massachusetts PAP is attached in the appendix to this Report.

¹⁴⁰² Id., at ¶ 433.

¹⁴⁰³ See Appendix A.

¹⁴⁰⁴ The new section to the agency regulations, 220 C.M.R. §§ 15.00 et seq., sets out an optional accelerated docket procedural schedule to resolve certain inter-carrier disputes within 90 days.

modeled in large part after the FCC's Accelerated Docket Procedures.¹⁴⁰⁵ The Massachusetts "Rocket Docket" procedures will give CLECs the assurance that should VZ-MA act in an anti-competitive manner, CLECs will have a forum in which to gain swift recourse.

Finally, the Department is confident that VZ-MA's entry into the long distance will benefit Massachusetts long-distance consumers by adding a significant competitor to the market. VZ-NY claims that when it entered the long distance market in New York earlier this year, it offered less expensive calling plans than most long distance carriers.¹⁴⁰⁶ Consequently, many long distance carriers in New York responded and introduced competitive lower priced bundled service offerings.¹⁴⁰⁷ This challenge -- and response behavior -- is what competition is about. An independent consumer group, the Telecommunications Research & Action Center, has concluded that customers in New York who have switched to VZ-NY for long distance services will save up to \$120 million per year.¹⁴⁰⁸ We would expect VZ-MA's entry into the Massachusetts long distance market to have the same beneficial effects here.

¹⁴⁰⁵ Implementation of the Telecommunications Act of 1996, Amendment of the Rules Governing Procedures to Be Followed When Formal Complaints are Filed Against Common Carriers, Second Report & Order, 13 FCC Rcd 17018 (1998). See 47 C.F.R. § 1.730.

¹⁴⁰⁶ VZ-MA Application, Appdx. A, Vol. 1, Tab 5, ¶¶ 5-21 (Breen Decl.).

¹⁴⁰⁷ Id., at ¶¶ 22-27.

¹⁴⁰⁸ VZ-MA Application, Appdx. A, Vol. 1, Tab 5, Att. A (Breen Decl.).